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Fourth Circuit rules law firm and debt collector waived arbitration rights by filing collection actions in state court

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A Fourth Circuit panel affirmed the denial of a motion to compel arbitration, finding that the law firm and debt collector who sought to compel arbitration of a class action had waived the right to arbitrate by previously initiating collection actions against the debtor plaintiffs in state court. *Roper v. Oliphant Fin., LLC*, No. 24-1933, 2025 WL 2058806, at *1 (4th Cir. July 23, 2025).

In 2016, the plaintiff, Thelma Roper, obtained a loan and signed a loan agreement requiring arbitration of disputes. *Roper v. Oliphant Fin., LLC*, Civ. No. 23-2112-BAH, 2024 WL 4170921, at *1 (D. Md. Sept. 12, 2024). After Roper defaulted on the loan, Oliphant Financial, LLC ("Oliphant") brought a debt collection action against Roper in Maryland state court. 2024 WL 4170921, at *1. The state court dismissed Oliphant's debt collection action as barred by the statute of limitations. *Id.*

Roper turned around and sued Oliphant and its attorneys, Stillman P.C. d/b/a The Stillman Law Office ("Stillman Law Office"), asserting in a putative class action that Oliphant and Stillman Law Office violated federal and state consumer protection laws by filing collection actions in state court beyond the applicable statute of limitations. *Id.* at *2. Oliphant and Stillman Law Office moved to compel arbitration based on the arbitration provision in the loan agreement. *Id.* The district court denied the motion, finding that they waived their rights to compel arbitration when they initiated the time-barred collection action against Roper, and Oliphant and Stillman Law Office appealed. *Id.* at *7. This waiver of arbitration also rendered ineffective a provision in the arbitration agreement barring class actions. *See id.* at *7 n.4 ("Because the class action provision is specific to arbitration and Defendants waived their right to arbitration, the clause barring class actions is inapplicable.").

A Fourth Circuit panel affirmed the denial, ruling that Oliphant and Stillman Law Office could not invoke the arbitration clause in the loan agreement to compel arbitration of the class action when they themselves had elected to file collection actions based on the same loans in state court. 2025 WL 2058806, at *2.

The Fourth Circuit panel considered whether Oliphant and Stillman Law Office "(1) knew the right to compel existed, and (2) acted inconsistently with the intention of enforcing the right to compel arbitration." *Id.* at * 1 (citing *Morgan v. Sundance, Inc.*, 596 U.S. 411, 417-19 (2022)). Under applicable state law, a party "acts inconsistently with the intent to compel arbitration when it litigates a case concerning the same claims as those it wishes to arbitrate," and a case "concerns the same claims if all parts of the dispute are 'interrelated' and 'actually part of one basic issue.'" *Id.* (quoting *Cain v. Midland Funding, LLC*, 156 A.2d 807, 816-17 (Md. 2017)).

The Fourth Circuit concluded that, because the class action claims only included those debtors that Oliphant and Stillman Law Office had sued outside of the limitations period, the appellants had acted inconsistently with their arbitration rights by initiating prior collection actions in state court. *Id.*

Takeaway: The *Roper* case serves as a helpful reminder that, while arbitration clauses are a powerful litigation tool, the right to arbitrate can be waived by a party who affirmatively acts in a manner that conflicts with that right, such as by directly filing claims in a trial court. It also highlights the wisdom of including broad class actions waivers in consumer contracts that preclude class actions without regard to arbitration, which some courts have upheld. *See, e.g.*, *Pace v. Hamilton Cove*, 317 A.3d 477, 489 (N.J. 2024).